

#27
B.3rd
11/27/01



PILLSBURY WINTHROP LLP

1600 TYSONS BOULEVARD MCLEAN, VA 22102 703.905.2000 F 703.905.2500

FACSIMILE

HONG KONG
LONDON
LOS ANGELES
NEW YORK
NORTHERN VIRGINIA
ORANGE COUNTY
PALM BEACH
SACRAMENTO
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
SINGAPORE
STAMFORD
SYDNEY
TOKYO
WASHINGTON DC

Date: November 20, 2001
From: Jean-Paul Hoffman
Total Pages (including): 3
User No: 14711
To: Examiner Geckil
Company: USPTO - Group Art Unit 2152
Must Be Sent By:
Phone No: (703) 905-2094
C/M No: 018404/270531
Phone No: (703) 305-9676
Fax No: (703) 746-7240

Comments:

U.S. Application of: FARBER et al.
Application No.: 09/612,598
Atty. Dkt.: 270531

PLEASE HAND DELIVER THIS DIRECTLY TO:

Examiner: Mehmet Geckil of Group Art Unit: 2152

Dear Examiner Geckil,

For your information, in litigation related to the Leighton et al. U.S. Patent No. 6,108,703, the judge issued the attached order interpreting some terms in that patent.

Regards,
Jean-Paul Hoffman

Confidentiality Note
The documents accompanying this facsimile transmission may contain confidential information which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, or the person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in this transmission is strictly PROHIBITED. If you have received this transmission in error,

If you have not properly received this fax, please call 703.905.2000. Thank you.

Operator: _____ Time Sent: _____ Batch ID: _____

30240429V1

⑤

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-11851-RWZ

AKAMAI TECHNOLOGIES, INC. and
MASSACHUSETTS INSTITUTE OF TECHNOLOGY

v.

DIGITAL ISLAND, INC.

and

DIGITAL ISLAND, INC.

v.

AKAMAI TECHNOLOGIES, INC. and
MASSACHUSETTS INSTITUTE OF TECHNOLOGY

ORDER REGARDING CLAIM CONSTRUCTION

NOVEMBER 8, 2001

ZOBEL, D.J.

The parties have requested the Court to construe certain claim language in U.S. Patent No. 6,108,703 ("the '703 Patent"), U.S. Patent No. 6,003,030 ("the '030 Patent") and U.S. Patent No. 5,978,791 ("The '791 Patent"). Both parties have filed briefs offering suggested interpretations of the disputed claim terms, and they advocated their respective interpretations at a *Markman* hearing on October 25, 2001, held pursuant to the decision in Markman v. Westview Instruments, Inc., 52 F.3d 967 (Fed. Cir. 1995), aff'd 517 U.S. 370 (1996). Having reviewed the parties' arguments and considered the central claim terms at issue, I construe these terms as indicated below. In the interest of time, and given the parties' concerns regarding the trial schedule, I enter this claim

137
DOCKETED

construction now without an explanatory memorandum. An accompanying memorandum will follow at a later date.

Construction of Terms in the '703 Patent:

"tagging"	providing a "pointer" or "hook" so that the object resolves to a domain other than the content provider domain
"to resolve to a domain other than the content provider domain"	to specify a particular group of computers that does not include the content provider from which an optimal server is to be selected
"resolving the ARL to identify a content server"	identifying an IP address for a specific content server in the network using one or more DNS lookups

Construction of Terms in the '030 Patent:

"network traffic test"	test performed by any entity on the "client" side of the network to evaluate traffic on the network
------------------------	---

Construction of Terms in the '791 Patent:

"substantially unique identifier"	an identity for a data item generated by processing <i>all</i> of the data in the data item, and <i>only</i> the data in the data item, through an algorithm
"using the identifier"	employing the unique identifier of the data item, with or without other information, to carry out the recited function

At the time of the *Markman* hearing, the parties had abandoned a number of claims relating to the '791 Patent and did not appear to have a common understanding as to which additional claim terms were still in dispute. The parties' written and oral presentations offer little assistance in this regard. I therefore limit my ruling to the terms above.

November 8, 2001
DATE

Ryan W. Zobel
RYAN W. ZOBEL
UNITED STATES DISTRICT COURT